

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

CRP.No. 1524 of 2002()

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(AGAINST THE ORFDER DATED 30/05/2002 IN E.P.NO.5/2001
IN O.S.NO.26/1999 ON THE FILE OF THE MUNSIFF'S
COURT, ETTUMANOOR)
-----**

REVN. PETITIONER: DECREE HOLDER/PLAINTIFF:

**STATE BANK OF TRAVANCORE, ATHIRAMPUZHA
BRANCH, KOTTAYAM DISTRICT.**

BY ADV. SRI.R.S.KALKURA

RESPONDENTS: JUDGMENT DEBTOR/DEFENDANT:

**THOMAS GEORGE, S/O.THOMMAN MEDANGAYIL
CHEMPILAYIL PUTHENPURAYIL, ETTUMANOOR P.O.,
ATHIRAMPUZHA VILLAGE, KOTTAYAM DISTRICT.**

BY ADV. SRI.V.G.ARUN

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

C.R.P.NO.1524/2002

ORDER ON C.M.P.NO.3795/2002 IN C.R.P.NO.1524/2002 D

DISMISSED

28/06/2007

SD/- PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

P.A.TO JUDGE

PIUS C. KURIAKOSE,J.

C.R.P.No.1524 of 2002

Dated: 28th June, 2007

ORDER

The order impugned in this C.R.P. is the order of the execution court in a proceeding for the execution of a mortgage decree obtained by the petitioner-Bank directing that only 20 cents from out of the decree schedule property having a total extent of 94 ½ cents alone be proclaimed and sold. There is no appearance for the respondent even though he has been served with notice.

2. I have heard the submissions of Mr.R.S.Kalkura, learned counsel for the petitioner-Bank. He has placed strong reliance on the judgment of this court in **Dhanalakshmi Bank Ltd. V.Divakaran** (2000(2) KLT 231) to argue that the decree being a mortgage decree the court is not at all justified in directing sale of only a portion of that property. Counsel submitted that even if its assumed that the execution court has a duty to ensure even when mortgage decrees are executed that only such portion of the property which is necessary for realising the decree debt is sold, then also the order to proclaim only a portion of the property is not correct. According to the learned counsel, what the court would have done was to issue proclamation for the entire property but sell only a portion depending

upon the prices quoted by the intending purchasers at the time of sale.

3. It cannot be said that the above submissions of Mr.Kalkura which have some support from the judgment of the Division Bench in **Dhanalakshmi Bank Ltd.** case (supra) are totally without merit. But at the same time a reading of paragraph 9 of the above judgment will show that the Division Bench became inclined to repel the contentions raised by the judgment-debtors in that case altogether in view of the situation that the judgment-debtors therein never contended that a portion of the property alone will be sufficient for recovering the decree debt. In the instant case obviously such a contention was raised by the judgment-debtors. It is in acceptance of the above contention that the court below passed the impugned order. I do not find any jurisdictional infirmity about the impugned order and hence I do not propose to interfere with the same. At the same time the C.R.P. will stand disposed of directing the court below to proclaim and sell the whole of the property if no third party purchasers come forward to purchase the 20 cents now ordered to be earmarked for an amount equal to the amounts due to the petitioner under the decree. There will be another direction to the court below, even as I

confirm the impugned order that the petitioner decree-holder shall not be insisted upon to purchase the portion now ordered to be proclaimed for the entire amounts due to them and that the E.P. will be continued for fresh sale if no third party purchaser is available to purchase the portion now ordered to be proclaimed for the entire debt.

srd

PIUS C.KURIAKOSE, JUDGE